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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

PRAMESH KIRTI MAHARAJ,

Defendant and Appellant.

E045742

(Super.Ct.No. FWV702924)

OPINION

APPEAL from the Superior Court of San Bernardino County. Shahla Sabet,  
Judge. Affirmed.

Tom Stanley for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant  
Attorney General, Gary W. Schons, Assistant Attorney General, Peter Quon, Jr., and  
Angela M. Borzachillo, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Pramesh Maharaj pled no contest to one count of corporal injury to a spouse (count 2—Pen. Code § 273.5, subd. (a)).<sup>1</sup> Thereafter, defendant filed a motion to withdraw his plea. The court denied the motion. On appeal, defendant contends his plea was constitutionally defective because it was not entered into freely or voluntarily. In particular, he maintains his plea resulted from the effects of his diabetes medication and the potential threat of the prosecution of his son. We hold the court acted within its discretion in denying his motion and, therefore, affirm the judgment in full.

### FACTUAL AND PROCEDURAL BACKGROUND

An officer was dispatched to defendant's residence where he encountered the victim, who informed the officer he believed he had been stabbed in the back by defendant, his father. The officer observed that the victim's T-shirt was soiled with blood and that he had a fresh wound on his back apparently inflicted by a knife. The victim told the officer that he heard what he believed was his father slapping his mother. The victim confronted his father and a struggle ensued. As he was walking downstairs, defendant leaned over the guardrail and stabbed him in the back. The victim then called the police.

Two other witnesses observed defendant at the location with a knife. The victim's mother stated that defendant had entered her room while she was sleeping and kicked her two to three times in the back. The knife was located in the victim's bedroom.

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

The People initially charged defendant by felony complaint with one count of assault with a deadly weapon (count 1—§ 245, subd. (a)(1)), an attached allegation that defendant had personally inflicted great bodily injury (§ 12022.7, subd.(a)), and one count of corporal injury to a spouse (count 2—§ 273.5, subd (a)). The People offered defendant a plea bargain whereby he would plead guilty to count 1 and receive 210 days of incarceration. Defendant rejected the offer. The People thereafter amended the complaint to allege defendant had suffered a prior strike conviction. Prior to the preliminary hearing defendant reiterated that he was turning down the previous offer, though the People noted that that offer was no longer available.

At the preliminary hearing, the victim reluctantly testified that on November 22, 2007, he heard an argument in his parents' room. He then got into a physical altercation with his father. The victim indicated he initially had the knife in his own hand, but his father took it from him and accidentally stabbed him with it during the squabble. After the fight the victim fled downstairs and felt pain in his back as his arm went limp. While he told the officer at the scene that he had witnessed his father kick his mother two or three times, he now testified that he only heard such sounds. He testified that his mother's injury was sustained while she was trying to break up the row between his father and him.

Defense counsel then asked the victim, “[h]ow many times did you swing the knife at your father?” The court interrupted the proceeding noting that the victim may be on the verge of incriminating himself in one of two ways; either by admitting to an

assault with the knife or opening himself up to a possible charge of perjury. The court then recessed in order to appoint the victim counsel.

Defendant subsequently entered into a plea agreement whereby he pled no contest to count 2 in return for dismissal of the remaining count and allegation and would receive the midterm of three years of incarceration. On the day appointed for sentencing, defendant indicated he wished to withdraw his plea. The court relieved defense counsel and appointed conflict counsel for purposes of the proposed motion to withdraw the plea.

Conflict counsel filed a motion to withdraw the plea asserting that defendant was confused about the nature and consequences of his plea, felt pressured into accepting the plea bargain, and felt rushed. In an unsigned declaration attached to the motion, defendant averred that he was a diabetic which may have contributed to his confusion at entry of the plea. Retained counsel later substituted for conflict counsel. Retained counsel filed supplemental points and authorities in support of the motion to withdraw the plea. In that pleading defendant specifically alleged his mental state was adversely affected by his diabetes and he felt coerced into entering the plea due to concern that his son may face prosecution.

At the hearing on the motion, defendant produced the testimony of himself and his doctor. Defendant's doctor testified that she had treated him for diabetes beginning in the latter part of 2004 and continued through June 2007. Defendant took a few different medications for his diabetes a couple times a day. If he were prevented from taking his medication, he could potentially incur symptoms including nausea, vomiting, dry mouth, frequent urination, difficulty concentrating, and dizziness. In her medical opinion, the

doctor believed that any interruption in defendant's medical regime would be bad for him. She also testified that a person having difficulty concentrating due to deprivation of diabetic medication would not necessarily display any other outwardly objective symptoms.

Defendant testified that he was arrested on November 22, 2007, and had been in custody since that date. Defendant took three different medications several times a day for his condition. On the day of his arrest and for several days thereafter, defendant continued to receive his medications. However, thereafter, he stopped receiving his medicine despite several requests. On December 10, 2007, the day he entered his plea, defendant had not received his medication for three or four days. The lack of medication and the different diet he received while incarcerated caused defendant to incur side effects including feeling "shaky," "dizzy," and having very bad headaches. Additionally, during his son's preliminary hearing testimony, defendant felt that his son's safety was being threatened due to possible prosecution stemming from that testimony. Under the circumstances, defendant did not fully understand what he was doing when he entered his plea. Defendant was "very confused" and could not concentrate. The court denied defendant's motion to withdraw the plea.

## DISCUSSION

Defendant's sole contention on appeal is that the trial court erred in denying his motion to withdraw his plea. Defendant essentially enumerates two bases for overturning the trial court's decision: (1) defendant did not understand the nature and consequences of his plea due to the withholding of his medications, and (2) defendant felt coerced into

entering the plea in order to protect his son from potential prosecution. The People respond that defendant failed to meet his burden below of establishing that the plea was the result of mistake, ignorance, or any other factor overcoming the exercise of his free will. Moreover, the People maintain there was no evidence that defendant's son was subject to prosecution at the time defendant entered his plea or that by entering his plea, defendant precluded any potential prosecution of his son. We agree with the People.

“A defendant who seeks to withdraw his guilty plea may do so before judgment has been entered upon a showing of good cause. [Citations] ‘Section 1018 provides that . . . “On application of the defendant at any time before judgment . . . the court may, . . . for a good cause shown, permit the plea of guilty to be withdrawn and a plea of not guilty substituted.” Good cause must be shown for such a withdrawal, based on clear and convincing evidence. [Citation.]’ [Citations.] ‘To establish good cause, it must be shown that defendant was operating under mistake, ignorance, or any other factor overcoming the exercise of his free judgment. [Citations.] Other factors overcoming defendant's free judgment include inadvertence, fraud or duress. [Citations.]’ [Citation.] ‘The burden is on the defendant to present clear and convincing evidence the ends of justice would be subserved by permitting a change of plea to not guilty.’ [Citation.]” (*People v. Weaver* (2004) 118 Cal.App.4th 131, 145-146.)

““When a defendant is represented by counsel, the grant or denial of an application to withdraw a plea is purely within the discretion of the trial court after consideration of all factors necessary to bring about a just result. [Citations.] On appeal, the trial court's decision will be upheld unless there is a clear showing of abuse of discretion.

[Citations.]’ [Citation.] ‘Guilty pleas resulting from a bargain should not be set aside lightly and finality of proceedings should be encouraged.’ [Citation.]” (*People v. Weaver, supra*, 118 Cal.App.4th at p. 146.)

“Abuse of discretion is established if, considering all of the circumstances before it, the trial court exceeded the bounds of reason. [Citation.] Of course, ‘[t]he scope of discretion always resides in the particular law being applied; action that transgresses the confines of the applicable principles of law is outside the scope of discretion and we call such action an abuse of discretion.’ [Citations.]” (*People v. Parmar* (2001) 86 Cal.App.4th 781, 792-793.)

Defendant failed to show by clear and convincing evidence that he did not enter into the plea voluntarily. As the court below noted, defendant’s separate contentions were “contradictory in nature[,]” because, on the one hand, defendant alleged he was incapable of understanding the nature of the proceedings. On the other hand, defendant apparently had sufficient presence of mind to comprehend that his son’s testimony subjected him to potential prosecution and that his plea might forestall such prosecution. The court noted that defendant’s doctor did not testify that defendant had actually experienced any of the side effects that could result from a deprivation of his medications. Nor did she testify that even if he had been deprived of those medications, he would necessarily experience any of those adverse reactions. The court observed that the record reflected “absolutely no indicia of confusion, stress, or anything else.” Moreover, defendant was, at all times, represented by counsel who would have been compelled to share with the court any concerns regarding defendant’s presence of mind

when entering his plea. Counsel below indicated no such problems. The court acknowledged that there was no evidence before it relative to defendant's adverse state of mind at entry of the plea other than defendant's self-serving statements that he was confused.

Moreover, there was no indication that the victim was facing potential prosecution or that defendant's plea would preclude such prosecution. Nothing in this record suggests that the People intended to prosecute defendant's son. Defendant's fear that his son might be subject to prosecution if defendant did not enter the plea was purely speculative. There is simply no evidence on the record that in return for defendant's plea he was promised that his son would receive any degree of leniency for any offenses arising out of his son's testimony at the preliminary hearing. Defendant's "rejection" of a plea offer for 210 days incarceration on the day of the preliminary hearing is not sufficient evidence that his subsequent acceptance of a plea bargain with harsher terms that same day was coerced. This is particularly true because that deal had already been rescinded a week earlier. Indeed, as the court below noted, defendant made a good bargain, reducing his exposure from 13 years of incarceration to three. Defendant's decision to accept the plea may merely have been a reasonable reaction to the discovery that his son's testimony at the preliminary hearing incriminated him; something he could not have been positive about until his son actually testified.

Finally, the court went over the plea form and the court's oral taking of the plea to show that defendant, at all times, had indicated comprehension of the proceedings. Defendant initialed all relevant provisions of his written plea agreement and signed the



form indicating comprehension of all its provisions. Specifically, defendant initialed the provision averring that he was not suffering from any condition which could negatively affect his ability to understand what he was doing. Another provision initialed by defendant read that “[n]o one has used any force or violence or threats or menace or duress or undue influence of any kind on me or anyone dear to me to get me to plead guilty/nolo contender (no contest) as indicated.” The court taking the plea specifically asked defendant if “anyone promised you anything or threatened you?” Defendant replied “[n]o.” Defendant initialed the provision stating that he had sufficient time to consult with his attorney regarding the agreement, that his attorney had explained everything in it to him, and that he fully understood and adopted each of the statements in the agreement as his own. Defendant stated he was entering his plea freely and voluntarily. Defendant’s counsel signed the agreement stating that she had personally observed the defendant sign the declaration and concurred in the entry of defendant’s plea. Defense counsel reiterated her concurrence orally at the taking of the plea. The court taking the plea explicitly found that defendant had freely and voluntarily entered the plea. In ruling on the motion to withdraw the plea, that court likewise found that defendant had freely, voluntarily, knowingly, and intelligently entered his plea. That decision was within the court’s discretion.

#### DISPOSITION

The judgment is affirmed.

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/s/ MILLER  
J.

We concur:

/s/ RICHLI  
Acting P. J.

/s/ GAUT  
J.